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UNITED STATES OF AMERICA

ORIGINAL

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

UNITED STATES OF AMERICA,)	No. SA CR 05-36-JVS
)	
Plaintiff,)	SUPPLEMENTAL BRIEFING ON "SIDE
)	SWITCHING"; DECLARATIONS OF DAVID
v.)	DJAVAHERIAN, MICHAEL GOOD, JOEL
)	SAYRES, DEBORAH LICHTA, and ROBERT
KENNETH KETNER)	PINON
)	
Defendant.)	

I. ADDITIONAL DECLARATIONS

The Court ordered the government to produce declarations of anyone who billed more than 50 hours to defendant's case while they worked at Irell. These declarations are attached (declarations of Richard Berger and John Wager, who both billed more than 50 hours, were filed as part of the government's Opposition). Below is a summary chart of every person who worked at Irell who billed more than 50 hours on defendant's matter (all of whom now have declarations on file). This sample accounts for 1889.6 hours or 97.4% of the total time billed on defendant's

APR 29 2005

1 matter. This figure does not include the 2.5 hours billed by
 2 attorneys who worked exclusively in Irell's Century City office.

<u>TIMEKEEPER</u>	<u>AMOUNT OF TIME BILLED</u>	<u>JOB</u>	<u>OFFICE</u>	<u>DECLARATION</u>
Richard Berger	330.15	Atty	NBO and CCO ¹	Never met or communicated with Mr. Stolper while at Irell.
David Djavaherian	129.95	Atty	NBO	Never communicated anything regarding defendant.
Michael Good	441.85	Atty	NBO	Never met or communicated with Mr. Stolper while at Irell.
Deborah Licata	270.25	Para	NBO	Never met or communicated with Mr. Stolper while at Irell.
William Lobel	68.6	Atty	NBO	Never met or communicated with Mr. Stolper while at Irell.
Robert Pinon	100.1	Para	NBO	Never met or communicated with Mr. Stolper while at Irell.
Joel Sayres	147.8	Atty	NBO	Never met or communicated with Mr. Stolper while at Irell.
John Wagner	400.9	Atty	NBO	Never communicated anything regarding defendant; did not speak with Mr. Stolper while he was representing defendant.
TOTAL	1889.6			

1" "NBO" refers to Irell's Newport Beach office. "CCO" refers to Irell's Century City Office.

1 **II. "SIDE SWITCHING"**

2 The Court inquired as to whether defendant's accusation of
3 "side-switching" was meritorious. The case answering this
4 question, cited in the government's Opposition, is Edwards v. 360
5 Communications, 189 F.R.D. 433 (D. Nev. 1999). In Edwards, an
6 attorney named Craig Friedberg ("Friedberg") worked for a the law
7 firm of Rawlings, Olson, Cannon, Gormley & Desruisseaux
8 ("Rawlings Olson"). Id. at 434. While Friedberg was employed at
9 Rawlings Olson, the firm took on the representation of 360
10 Communications after it was sued by Paul Edwards ("Edwards").
11 Id. During the Rawlings Olson's representation of 360
12 Communications it "performed various pretrial tasks, ranging from
13 the drafting of answers to Plaintiff's Complaint to the service
14 of dispositive motions" in fending off Edwards's lawsuit. Id.
15 Friedberg worked at Rawlings Olson for six of the seven months it
16 represented 360 Communications, but he was "never involved in the
17 representation." Id.

18 Friedberg then quit the Rawlings firm to open a solo
19 practice. Id. Two months after he went out on his own,
20 Friedberg took on the representation of Edwards in its lawsuit
21 against 360 Communications. Id. 360 Communications moved to
22 disqualify Friedberg from representing Edwards, claiming he was
23 "per se" disqualified from the representation based on his prior
24 association with Rawlings Olson. Id.

25 The Nevada District Court understood that "Friedberg has
26 undertaken representation of an adverse party in a proceeding
27 identical to the one in which Rawlings Olson had previously
28 provided representation." Id. at 437. The Nevada District Court

1 That returns the inquiry to exactly where every case holds
2 it must begin and end: whether Mr. Stolper had access to
3 defendant's confidential information while he was at Irell.
4 Every declaration filed by the government demonstrates that Mr.
5 Stolper was unaware defendant existed, much less had access to
6 his confidential information.

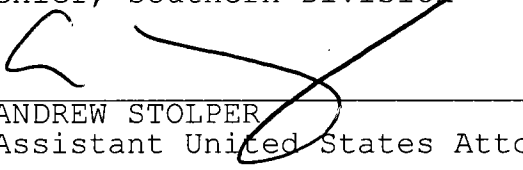
7 Defendant claim that "side switching" requires per se
8 disqualification of an attorney who had no involvement with prior
9 matter, finds no support in the case law, no support in the ABA
10 Model Rules, and has been specifically rejected by Edwards.

11
12 DATED: April 27, 2005

Respectfully submitted,

13 DEBRA W. YANG
14 United States Attorney

15 WAYNE GROSS
16 Assistant United States Attorney
17 Chief, Southern Division

18 
19 _____
20 ANDREW STOLPER
21 Assistant United States Attorney
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DECLARATION OF ROBERT PINON

I, Robert Pinon, hereby declare and state as follows:

1. I was a paralegal at Irell & Manella's Newport Beach, California office.
2. I worked on the bankruptcy of Kenneth Ketner.
3. Prior to this declaration, I never heard of, or otherwise communicated with, Andrew Stolper.

I declare under penalty of perjury of the laws of the State of California and the United States that the foregoing is true and correct.

Executed April 25, 2005 in Orange County, California,


ROBERT PINON

DECLARATION OF DEBORAH LICATA

I, Deborah Licata, hereby declare and state as follows:

1. I was a paralegal at Irell & Manella's Newport Beach, California office.
2. I worked on the bankruptcy of Kenneth Ketner.
3. Prior to this declaration, I never heard of, or otherwise communicated with, Andrew Stolper.

I declare under penalty of perjury of the laws of the State of California and the United States that the foregoing is true and correct.

Executed April 25th, 2005 in Orange County, California,


DEBORAH LICATA


DECLARATION OF JOEL SAYRES

I, Joel Sayres, hereby declare and state as follows:

1. I am an attorney at Irell & Manella's Newport Beach Office. I worked on Kenneth Ketner's bankruptcy.
2. I previously met Andrew Stolper once when he and I attended a dinner arranged by mutual friends. The first time I met Mr. Stolper he was already an Assistant United States Attorney. No client matters were discussed at the dinner.
3. Prior to meeting Mr. Stolper at dinner, I had never spoken with or otherwise communicated with Mr. Stolper.

I declare under penalty of perjury of the laws of the State of California and the United States that the foregoing is true and correct.

Executed April 25, 2005 in Newport Beach, California,



JOEL SAYRES

DECLARATION OF DAVID DJAVAHERIAN

I, David Djavaherian, hereby declare and state as follows:

1. I am an attorney at Irell & Manella's Newport Beach Office. I worked on Kenneth Ketner's bankruptcy.
2. Mr. Stolper and I met at the firm's new associate retreat at La Quinta just I after I joined the firm.
3. Mr. Stolper and I would exchange pleasantries at firm social events but, to the best of my recollection, otherwise we did not speak.
4. I did not discuss, or otherwise communicate, information relating Mr. Ketner's matter with Mr. Stolper.

I declare under penalty of perjury of the laws of the State of California and the United States that the foregoing is true and correct.

Executed April 26, 2005 in Newport Beach, California,



DAVID DJAVAHERIAN

DECLARATION OF MICHAEL GOOD

I, Michael Good, hereby declare and state as follows:

1. I am a bankruptcy attorney in Coudert Brothers Los Angeles office.
2. I previously worked as a bankruptcy attorney in Irell & Manella's Newport Beach office. I worked on the bankruptcy of Kenneth Ketner.
3. Prior to being requested to sign this declaration, I had never heard of or communicated with Andrew Stolper.
4. Prior to being asked to sign this declaration, I never communicated with Mr. Stolper regarding Kenneth Ketner.

I declare under penalty of perjury of the laws of the State of California and the United States that the foregoing is true and correct.

Executed April 27, 2005 in Los Angeles, California,


MICHAEL GOOD

CERTIFICATE OF SERVICE BY MAIL

I, **SONIA ARMENTA**, declare: That I am a citizen of the United States and resident or employed in Orange County, California; that my business address is United States Attorney's Office, 411 West Fourth Street, Suite 8000, Santa Ana, California 92701; that I am over the age of eighteen years, and am not a party to the above-entitled action;

That I am employed by the United States Attorney for the Central District of California, who is a member of the Bar of the United States District Court for the Central District of California, at whose discretion the service by mail described in this Certificate was made; that on April 28, 2005, I deposited in the United States Mails, United States Attorney's Office, 411 West Fourth Street, Suite 8000, Santa Ana, California 92701 in the above-entitled action, in an envelope bearing the requisite postage, a copy of:

SUPPLEMENTAL BRIEFING ON "SIDE SWITCHING"; DECLARATIONS OF DAVID DJAVAHERIAN, MICHAEL GOOD, JOEL SAYRES, DEBORAH LICHTA, AND ROBERT PINON
addressed to:

SEE ATTACHMENT

at their last known address, at which place there is a delivery service by United States Mail.

This Certificate is executed on April 28, 2005, Santa Ana, California. I declare under penalty or perjury that the foregoing is true and correct.


Sonia Armenta

SERVICE LIST

THOMAS H. BIENERT JR.
107 Avendia Miramar, Suite B
San Clemente, CA. 92672

1 applied the ABA Model Rules and determined that disqualification
2 was not warranted because Friedberg had no involvement in the 360
3 Communications matter while he was at the Rawlings Olson. Id. at
4 439. The court noted that:

5 While it might make sense to apply a per se standard of
6 disqualification in situations where the challenged
7 attorney was directly involved in the first
8 representation, the wisdom of such an approach becomes
9 far less clear in cases where the attorney lacks any
10 substantial involvement in the disputed matter. Thus,
11 some jurisdictions limit automatic disqualifications to
12 cases where the attorney whose disqualification is
13 sought was *personally* involved in the representation of
14 the former client. See, e.g., Dieter v. Regents of
15 the Univ. of California, 963 F.Supp. 908, 910-12
16 (E.D.Cal. 1997) (applying California law)
17 Id. at 438 (emphasis original).

18 Friedberg left his firm, who was representing 360
19 Communications in direct litigation with Edwards, to take on the
20 representation of Edwards in that same case. Friedberg, in
21 defendant's parlance, "switched sides," but the district court
22 found that of no moment because he had no confidential
23 information. Applied to the instant case, since it is clear that
24 Mr. Stolper had no involvement in defendant's Irell
25 representation, Edwards demonstrates that Mr. Stolper may not be
26 automatically disqualified even it were assumed, *arguendo*, that
27 the Department of Justice was on the opposite "side" of defendant
28 during his bankruptcy.